

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERNEST W. MOODY

Appeal No. 2004-0361
Application No. 09/854,156

ON BRIEF

Before KIMLIN, PAK, and TIMM, *Administrative Patent Judges*.
TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1-26 which are all the claims pending in the application. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 134.

INTRODUCTION

The claims on appeal are directed to a method of playing a stud poker card game.

According to the specification, the invention relates primarily to electronic video stud poker (specification, p. 1, ll. 1-2). The method of play allows the player to play multiple poker hands at the same time (specification, p. 1, ll. 3-4). The player starts with two or more identical partial hands and then each hand is completed by displaying additional cards so that each hand is a final stud poker hand (specification, p. 1, ll. 4-7). The winnings are paid out based on the poker hand rankings of the final hands (specification, p. 1, ll. 2-3).

Claim 14 is illustrative of the method on appeal:

14. A method of playing a stud poker card game in which a final hand has a predetermined number of cards comprising:

- a) the player selecting to play at least two hands;
 - b) a player making a wager which is allocated among the hands selected to be played by the player;
 - c) dealing and displaying face up a number of partial hands of less than the predetermined number of cards, the number of partial hands corresponding to the number of hands selected to be played by the player, each partial hand having the same cards by suit and rank;
 - d) dealing and displaying face up additional cards to each hand to complete each hand so that each final hand has the predetermined number of cards;
 - e) determining the poker hand ranking of each final hand;
- and
- f) paying the player a pre-established amount based on the amount of the wager on

each hand if the final hand comprises a predetermined poker hand ranking.

As evidence of unpatentability, the Examiner relies upon the following prior art references:

Johnson	5,573,249	Nov. 12, 1996
Williams	6,132,311	Oct. 17, 2000
Kadlic	6,146,271	Nov. 14, 2000
Yoseloff	6,227,969 B1	May 8, 2001

The specific rejections are:

1. Claims 1, 4, 14, 21, and 26 rejected under 35 U.S.C. § 102(e) as being anticipated by Williams;
2. Claims 2, 3, 5, 8-13, 15-17, 20, and 22 rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams in view of Johnson;
3. Claims 6, 7, 18, 19, 23, and 24 rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams in view of Yoseloff; and
4. Claim 25 rejected under 35 U.S.C. § 103(a) as being unpatentable over Williams in view of Kadlic.

Because the Examiner has failed to establish a *prima facie* case of unpatentability, we reverse.

OPINION

All of the independent claims are rejected as anticipated over Williams. Anticipation requires that each and every step of the claimed method be disclosed or inherently present in a method described in the prior art. *See In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). The Examiner has failed to point out a method described in Williams which meets the requirements of anticipation.

First, we cannot agree with the Examiner that the word “stud” in the claims is non-limiting. The word “stud” breathes life and meaning into the claim. The method is a method of “stud poker” and these words serve to restrict the method to those poker games known in the art as stud poker games. Stud poker is a category of poker not merely an intended use for the method steps recited in the body of the claim as argued by the Examiner.

Reading the claims correctly to be limited to stud poker games, we cannot agree that Williams anticipates the method of the claims. Both Williams and Appellant’s specification discuss stud poker and draw poker as different categories of poker games and provide evidence that stud poker was understood by those of ordinary skill in the art to be different from draw poker (specification, p. 1, l. 16 to p. 2, l. 21 and Williams, col. 1, ll. 19-20). In draw poker, the player is given the option to discard some cards in the initial hand and draw new cards to replace them. There is no such discard and draw option in stud poker. The Examiner argues that “Williams sets up the environment by indicating numerous stud poker games in the ‘Back ground of invention’ [sic, ‘Background of the Invention’] in the disclosure.” But the fact that Williams

describes several stud poker games in the Background of Invention does not establish anticipation of the claimed stud poker game: The Examiner does not find that those games are the same as that claimed. Nor does the mention of those games somehow transform the draw poker game described elsewhere in Williams into a stud poker game. Using the disclosures of different games in combination to cobble together a game meeting the limitations of the claims would require picking and choosing between the different described games in a manner more appropriate to an obviousness rejection than to an anticipation rejection. In order to anticipate, the reference must clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the invention without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference. *In re Arkley*, 455 F.2d 586, 587, 172 USPQ 524, 526 (CCPA 1972).

As a second matter, all the claims further require allocation of the wager among the multiple hands and the Examiner has failed to explain how Williams' "one wager for all hands" is the same as the claimed "wager which is allocated among the hands." Such an explanation is required in this case because the two wagering processes appear to be different. The specification indicates that to allocate a wager among the hands means to divide it so only a portion applies to each hand. This appears to be an accepted meaning in the art as evidenced by Kadlic.¹ The specification provides an example of wager allocation in which the player has

¹Kadlic uses "allocate" to refer to this type of division of the wager as well (col. 7, l. 58 to col. 8, l. 3).

selected three hands to play and makes a wager of fifteen credits. As explained in the specification, the computer allocates five credits to each hand (specification, p. 10, ll. 9-13). In the method of Williams, the wager is not “allocated among the hands” but is applied in full to each hand. In the example of the specification, each of the three hands would have fifteen credits applied to it if the process of Williams were followed. There is a difference between the Williams method and that of the claims which is unaccounted for by the Examiner and we cannot say that the Examiner has adequately supported the conclusion that “both have the same meaning.”

Lastly, all of the claims require the dealing and displaying of multiple partial hands, each partial hand having the same cards and the Examiner has not established that Williams both deals and displays the required multiple hands. Williams deals and displays only one community partial hand. While the community cards are common to each of the final hands in practice, only one set of community cards is dealt and displayed. While, in concept, the result is the same to the player, the specific dealing and displaying requirements of the claims are not met by Williams. There is not the identity required by anticipation.

We find that the Examiner has failed to establish anticipation by Williams with respect to the subject matter of claims 1, 4, 14, 21, and 26. Williams is relied upon in the obviousness rejections in the same capacity as in the anticipation rejection and the Examiner fails to provide findings as to why the “differences” discussed above would have been obvious to one of ordinary skill in the art at the time of the invention. Specifically, the rejections lack any findings of

reasons, suggestions, or motivations to make the modifications based on knowledge within the skill of the art at the time of the invention. We conclude that the Examiner has failed to establish a *prima facie* case of obviousness with respect to each of the obviousness rejections.

OTHER ISSUES

We note that we are not granting Appellant a patent, we are simply reversing rejections. *See In re Arkley*, 455 F.2d 586, 589, 172 USPQ 524, 527 (CCPA 1972). It may well be that there is a proper basis for rejecting the claims; however, the Examiner has not made it here. *Id.*

Specifically, we bring Kadlic to the attention of the Examiner and Appellant. This reference had been combined with Williams to reject claim 25. Kadlic was only applied for its teaching of allowing a player to select cards for partial hands. But there is other evidence within Kadlic, not relied upon by the Examiner, which calls into question the patentability of the independent claims and possibly other claims.

Kadlic describes a method of playing a poker card game. While the reference focuses on draw poker, it indicates that the game can be applied to any variation of draw poker or stud poker (col. 5, ll. 66-67). One variation of play is of particular interest, the variation called Pick 144 (col. 7, l. 57 to col. 9, l. 23). See, for instance, the discussion of wager allocation for step b) (col. 7, l. 57 to col. 8, l. 3), hand selection for step a) (col. 8, ll. 3-7), the selection and duplication of the partial hand for claim step c) (col. 8, ll. 30-34), and the sequence of dealing and displaying

the partial and final hands for step d) (col. 9, ll. 15-23). Kadlic describes the payout method of steps e) and f) in column 5, lines 34-37.

Upon return of this application to the jurisdiction of the Examiner, Kadlic should be examined for its impact on the patentability of the claims, either alone or in combination with other prior art.

CONCLUSION

To summarize, the decision of the Examiner to reject claims 1, 4, 14, 21, and 26 under 35 U.S.C. § 102(e) and claims 2, 3, 5-13, 15-20, and 22-25 under 35 U.S.C. § 103(a) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REVERSED

EDWARD C. KIMLIN
Administrative Patent Judge

CHUNG K. PAK
Administrative Patent Judge

CATHERINE TIMM
Administrative Patent Judge

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